

1 HUNTON ANDREWS KURTH LLP
2 M. BRETT BURNS (State Bar No. 256965)
3 mbrettburns@huntonAK.com
4 50 California Street, Suite 1700
5 San Francisco, California 94111
6 Telephone: 415 • 975 • 3700
7 Facsimile: 415 • 975 • 3701
8
9 Attorneys for Defendant
10 PEET'S COFFEE, INC.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

10 BRIAN WHITAKER,
11 Plaintiff,
12 v.
13 PEET'S COFFEE, INC., a Virginia Corporation,
14 Defendant.

CASE NO. 3:21-CV-07698-VC

**DECLARATION OF MICHAEL BRETT
BURNS IN SUPPORT OF DEFENDANT'S
REPLY IN FURTHER SUPPORT OF ITS
MOTION FOR ATTORNEY'S FEES AND
SANCTIONS**

Complaint Filed: September 30, 2021

DECLARATION OF MICHAEL BRETT BURNS

I, Michael Brett Burns, declare:

1. I am an attorney licensed to practice law in the State of California and am an attorney with the law firm of Hunton Andrews Kurth LLP, which is the law firm of record for Defendant Peet's Coffee, Inc. I have personal knowledge of the matters set forth herein, and if called upon to do so, could and would testify competently thereto.

2. Attached as “Exhibit A” are excerpts from *Whitaker v. Salah R. Salah*, No. 4:21-cv-09548-YGR, Motions Hearing Transcript at 56:7-25 (June 16, 2022), in which Plaintiff’s Counsel characterized Plaintiff’s “tester” activities as Plaintiff’s “*business*,” and conceded that seeking statutory damages under the Unruh Act as “*it’s how [he] makes money, yes.*”

3. Attached as “Exhibit B” are excerpts from *Whitaker v. Peet’s Coffee, Inc.*, No. 3:21-cv-07698-VC, May 31, 2022 Evidentiary Hearing Transcript at 23:1-11, in which Plaintiff testified “*So being at a parallel angle is very difficult for me to have to lean over, grab my drink with two hands, because I have no finger dexterity whatsoever, and at that point I’m not enjoying [my drink].*”

4. Attached as "Exhibit C" is a photograph of Plaintiff at a coffee shop in San Mateo, California sitting at a patio table at a parallel angle with a drink.

5. Attached as "Exhibit D" are links to music videos Plaintiff has posted to YouTube that show him holding and smoking cigars, holding and smoking cigarettes, holding drumsticks, counting dollar bills, drinking from shot glasses, and holding liquor bottles, among other things, all of which demonstrate finger dexterity.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed this 27th day of July, 2022, in Danville, California.

By: /s/ Michael Brett Burns
Michael Brett Burns